IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 6929 of 2007(Y)

IA.783/2006 IN OS.570/1995 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

PAUL S.ATTOKARAN, S/O.LATE L.A.SEBASTIAN
C/O.K.K.DEVASSY, 1ST CROSS ROAD, MUNDUPALAM,
TRICHUR-1.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.T.KRISHNAN UNNI

RESPONDENTS:

1. LISSY JONES, W/O.LATE JONES S.ATTOKARAN,
ATTOKARAN HOUSE, MISSION QUARTERS, TRICHUR-01.

2. SEBASTIAN JONES, S/O. LATE JONES S.ATTOKARAN, DO. DO.

3. BEENA JONES, D/O.LATE JONES S.ATTOKARAN, DO. DO.

4. RUPA JONES, D/O.LATE JONES S.ATTOKARAN, DO. DO.

5. GEETHAMMA JOSEPH, W/O. LATE JOSEPH,
ATTOKARAN HOUSE, GOSAIKUNNU, KURIACHIRA.

6. SEBASTIAN, S/O. LATE JOSEPH, DO. DO.

7. JOHN, S/O. LATE JOSEPH, DO. DO.

8. ANU, S/O. LATE JOSEPH, DO. DO.

R2, R5 & R7 BY SRI.J.OM PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARDON 13/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 6929 of 2007 Y

JUDGMENT

Adv.Sri.J.Omprakash enters appearance for respondents 2, 5 and 7 and he vehemently opposes the stay of all further proceedings in I.A.No. 783/06 in O.S.No.570/95 on the file of the II Additional Sub Court, Thrissur, including stay of inspection by the Advocate Commissioner. It is submitted that respondents 2, 5 and 7 are respectively the second plaintiff and defendants 3 and 5 in the suit.

2. It is vehemently contended by the counsel for the above respondents that the petitioner, who is the first defendant in the suit, is in exclusive possession of the entire properties and he is making all attempts to see that a final decree is not passed, so as to continue in exclusive possession of the entire properties. He further submits that it is true that the conduct of the

Commissioner might have created some problem, but, however, that is no reason why the relief, which the parties are entitled to, is to be delayed further, the suit being of the year 1995. He further submits that the Commissioner, for the purpose of effecting division by metes and bounds, has already measured out thirteen items of properties and only one item of property remains to be measured and the Commissioner could not do that in view of the stay obtained by the petitioner/ first defendant from this Court.

3. It is further submitted that if at all for any reason the report filed by the Commissioner is not found to be acceptable, his parties are prepared to take the risk and to wait till a fresh Commission is issued by the court to measure out the properties and effects division by metes and bounds. Inasmuch as it is submitted that the Commissioner has measured out thirteen items of

properties and only one item of property remains to be measured out, I am of the view that stay ordered by this Court shall not stand in the way of the Commissioner executing the work. As rightly submitted by the counsel for the above respondents, if it is found that the work executed by the Commissioner is prejudicial to any of the parties, that would be liable to be set aside at the risk of the above respondents, who insist for the work of the Commissioner being completed.

In the result, I dispose of this writ petition and vacate the stay refusing to set aside Exhibit P14 order and to appoint a fresh Commission and direct the present Commissioner to execute the order without causing any heartburn to any of the parties or to their Lawyers as has been caused by filing Exhibit P3 petition, issuing instructions in the nature of Exhibit P9 and filing petitions in the nature of Exhibit P11. It is made clear that

the Commissioner is expected to discharge the work entrusted with him as a Commissioner in a better manner without being peevish to parties and their Lawyers.

13th April, 2007 (K.P.Balachandran, Judge)

tkv